Dockets: 2006-1455(EI)
2006-3144(EI)
2006-1456(CPP)
2006-3143(CPP)

BETWEEN:

DEAN LANG and SHARON LANG,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeals heard on August 21, 2007 at Prince Albert, Saskatchewan.

Before: The Honourable D.G.H. Bowman, Chief Justice

Appearances:

Counsel for the Appellants:	James H.W. Sanderson, Q.C.
Counsel for the Respondent:	Brooke Sittler

JUDGMENT

The appeals from assessments and decisions made by the Minister of National Revenue under the *Employment Insurance Act* and the *Canada Pension Plan* are allowed and the assessments referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with these reasons and the decisions are varied in accordance with these reasons.

Signed at Ottawa, Canada this 14th day of September 2007.

"D.G.H. Bowman"

Bowman, C.J.

Citation: 2007TCC547
Date: 20070914
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BETWEEN:

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REASONS FOR JUDGMENT

Bowman, C.J.

[1] These appeals are from decisions and assessments made by the Minister of National Revenue under the *Canada Pension Plan* and the *Employment Insurance Act*, that certain workers engaged by the appellants were engaged in pensionable and insurable employment by the appellants.

[2] Dean and Sharon Lang, the appellants, carried on the business in Saskatchewan of furnace and duct cleaning under the name of Dun-Rite Vac ("Dun-Rite"). They engaged the services of the workers who worked at houses where Dun-Rite's services were retained.

[3] The appellants' position is that the workers were independent contractors and were not employed under a contract of service.

[4] Each case in which the question of employee versus independent contractor arises must be determined on its own facts. The four components in the composite test enunciated in *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025 and *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983, must each be

assigned their appropriate weight in the circumstances of the case. Moreover, the intention of the parties to the contract has, in recent decisions of the Federal Court of Appeal, become a factor whose weight seems to vary from case to case. (*The Royal Winnipeg Ballet v. M.N.R.*, 2006 FCA 87; *Wolf v. Canada*, [2002] 4 FCA 96; *City Water International Inc. v. M.N.R.*, 2006 FCA 350).

[5] The Notices of Appeal substantially are the same in all of the appeals and they set out the facts as they were presented in evidence. The Notice of Appeal in appeal number 2006-3143(CPP) reads as follows:

> 1. The Appellants are husband and wife owing equipment for the vacuuming of furnace and duct work in residences and other buildings.
>
> 2. The Appellants, while living in Hudson Bay, Saskatchewan, go from town to town, village to village, and door to door seeking persons wishing to have their furnace and ducts vacuumed. This is a selling job which may require many interviews for each customer found.
>
> 3. The Appellants have a list of persons who are interested in doing the work once the customers are located by the Appellants, and before the Appellants go to a town or village, they determine who wants to do the work in that town or village, when they would do the work, and what appointments they wish the Appellants to make for them. It normally takes about 2 hours to vacuum the furnace and ducts of a residence, and to have it worth the trip by the person who will be doing the work, an attempt is made to arrange three or four appointments each day.
>
> 4. Once appointments are made, the person or persons who will be doing the work are given the dates and times, and they are responsible to deal with the customer from that point onward.
>
> 5. The Appellants supply the use of the vacuum equipment to the person doing the work, and if transportation is necessary, the Appellants will make their truck available and supply the fuel for the truck. The Appellants have a camper trailer which they use in going town to town, and if it is necessary for the person doing the work to spend a night in the town where the work is being done, they are given the use of the camper trailer. If the camper trailer is not available, the Appellants will, when same is available, pay for a room for the person doing the work.
>
> 6. The person responsible for doing the work may do it themselves or have someone else do the work for them, in which case they pay the worker.

7. The person responsible for doing the work has the obligation to satisfy the customer, and if rectification is needed, the person responsible for doing the work bears the costs of satisfying the customer.

8. The Appellants supply or rent their vacuum equipment to the person doing the work, and if same gets damaged, the person doing the work is responsible for costs of repairs.

9. The person doing the work supplies any tools he may need.

10. The arrangement between the Appellants and the people who do the work, with the exception of one Monty Hagan, is the same.

    (i) The Appellants quote the cost to the customer calculated by allowing $40.00 for the vacuum equipment, $125.00 for a furnace, $55.00 for the mains, and $5.00 for each register in the building. There are usually between 10 and 12 registers in a residence. The quote for a residence with 12 registers would be $240.00.

    (ii) The quoted cost is divided between the Appellants and the person doing the work, with the Appellants getting $40.00 for the use of the equipment, the person doing the work 25% of the balance of the charge, and the Appellants the balance. With a $240.00 charge, the person doing the work gets $50.00 and the Appellants $190.00. The person who does the work collects from the customer and turns the collection over to the Appellants who divide same every two weeks.

11. Once an appointment is arranged by the Appellants with a customer they have no further involvement. They do not supervise the work or whoever is doing the work.

12. The persons who in 2004 and 2005 did the work are those named as being held to be employees of the Appellant.

13. In the case of Monty Hagan, he employs persons to find customers and pays those persons. He normally employs the workers who do the work and pays them. The Appellants supply the vacuum equipment. Monty Hagan takes care of his own transportation needs and bears the cost of same. The cost quoted by him is the same as set forth in section 10(i). The division of the cost between Monty Hagan and the Appellants is $40.00 to the Appellants for the vacuum equipment, 25% of balance to Monty Hagan for his costs, 25% to the party doing the work, and the balance to the Appellants. A $240.00 quoted job would be divided $40.00 to the Appellants for the vacuum equipment plus $100.00, with $50.00 to Monty Hagan and $50.00 to the worker. The Appellants have no involvement with the work.

[6] These facts are substantially correct, except for paragraphs 8 and 9. The appellants do not rent the vacuum equipment to the workers. They supply the vacuum equipment and the van. The workers supply small tools such as screwdrivers or hammers which are needed.

[7] The Reply to the Notice of Appeal in CPP case (2006-3143) reads as follows:

> 6. In so deciding as the Minister did with respect to the Workers, the Minister relied on the following assumptions of fact:
>
> (a) the Appellant was in the business of furnace and duct cleaning;
>
> (b) the Appellant operated under the name "Dun-Rite Vac";
>
> (c) the Appellant's business normally traveled to smaller communities throughout Saskatchewan;
>
> (d) the Appellant determined and scheduled the locations to be traveled to;
>
> (e) the Appellant obtained clients (hereinafter "the Clients") and booked the jobs;
>
> (f) Liebrecht was the Appellant's step-son;
>
> (g) the Workers duties included cleaning furnaces and ducts;
>
> (h) Hagan also performed sales duties;
>
> (i) Liebrecht also performed some equipment maintenance;
>
> (j) Embrey was a furnace cleaner's helper;
>
> (k) the Workers worked for the Appellant on a full-time, on-going basis;
>
> (l) the Workers did not enter into written contracts with the Appellant;
>
> (m) the Workers were paid by commission and earned 25% of the job value;
> (n) an average job was worth approximately $240.00, the Appellant deducted $40.00 off the top and the Workers would receive 25% of the remaining $200.00;
>
> (o) Hagan also received bonuses;

(p) the Appellant determined the Workers' wage rates;

(q) the Appellant determined the rates charged to the Clients;

(r) Clients' payments were made to Dun-Rite Vac;

(s) the Workers submitted Clients' invoices and payments to the Appellant on a daily basis;

(t) the Appellant handled the money, calculated earnings and paid the Workers;

(u) the Appellant paid the Workers on a regular bi-weekly basis;

(v) the Workers did not invoice the Appellant;

(w) the Appellant determined the Workers' hours and days of work;

(x) the Workers normally worked as part of a crew, normally three people per crew;

(y) members of a crew normally traveled together;

(z) the Appellant scheduled the trips and the Clients;

(aa) the Appellant set the business operating hours;

(bb) the Workers normally worked from 8:00AM to 5:00PM, Monday to Friday;

(cc) the Appellant provided the Workers with direction and instruction;

(dd) the Appellant set the Workers' deadlines and priorities;

(ee) the Appellant determined the work locations;

(ff) the Appellant assigned work to the Workers;

(gg) the Clients belonged to the Appellant;

(hh) the Workers represented the Appellant while performing their duties;

(ii) the Workers did not replace themselves;

(jj) the Appellant obtained and paid replacements as required;

(kk) the Appellant provided training to some of the Workers;

(ll) the Appellant provided all of the tools and equipment required including the truck, vacuum equipment, hoses and cleaning tools;

(mm) the Appellant also provided a camper trailer for the Workers to sleep in;

(nn) the Workers normally traveled in the Appellant's vehicle;

(oo) Hagan used his own vehicle at times;

(pp) the Workers did not enter into a rental agreement with the Appellant;

(qq) the Workers did not pay the Appellant for the use of the Appellant's equipment;

(rr) the Appellant supplied all of the materials required;

(ss) the Appellant supplied Hagan with sales flyers;

(tt) the Appellant paid for hotels as required;

(uu) the Workers did not incur any expenses in the performance of their duties;

(vv) the Workers did not have a chance of profit or risk of loss;

(ww) Liebrecht was dealing with the Appellant at arm's length;

(xx) the Workers did not have specific licenses to perform their duties;

(yy) the Workers did not have trade names or business licenses;

(zz) the Workers did not have their own liability insurance or WCB;

(aaa) the Workers were not in business for themselves while performing duties for the Appellant;

(bbb) the Workers did not charge the Appellant GST, and

(ccc) the Workers' wages from the Appellant, for the period January 1, 2004 to August 31, 2005 were as follows:

	2004	2005
Brass	$ 958.00	$ 5,012.50
Embrey	$ 2,084.25	$ 8,614.55
Hagan	$44,363.85	$14,929.45
Liebrecht	$26,080.23	$16,085.95
McLaughlin	$ 1,327.25	
Morton	$ 2,470.50	

Munro		$ 4,952.25
Nesbitt	$14,212.75	
Pankratz	$12,865.35	
Peters		$ 436.00
Ryan	$ 2,187.90	
Siggulkow	$ 7,548.85	
Vitkauskas	$20,986.10	$17,631.40

[8] Many of the facts assumed are not controversial. Some are argumentative. To the extent that they are inconsistent with the facts alleged in the Notice of Appeal I find that the facts stated in the Notice of Appeal have been established in evidence. What it boils down to is this: the appellants would go to cities and towns in Saskatchewan and obtain orders for Dun-Rite to clean the ducts of the customers. They would contact someone on the list of persons who would be interested in doing the work and would advise that person of the time and place of the appointment. They would provide the van and vacuum equipment and transport the workers to the site where the work was to be done. The workers were free to decline a job if they chose to. They were paid a percentage of the fee earned by the appellants. They collected the money from the customers and handed it over to the appellants. If the work was unsatisfactory or if there was a complaint it was the worker who had to return and correct the problem at his own expense.

[9] The appellants regarded the workers as independent contractors and those workers who testified filed their income tax as self-employed. Joe Vitkauskas saw himself as self-employed as did Kris Liebrecht, who regarded himself as a subcontractor and also filed as self-employed.

[10] I have not dealt separately with Monty Hagan. He was paid a commission on a different basis and was actively involved in recruiting workers and soliciting business. The respondent in argument conceded that Monty Hagan was an independent contractor and so I shall not consider him any further. From the evidence I think the concession was correctly made.

[11] So, what about the others? The majority of employee versus independent contractor cases are close. They require a balancing of a variety of factors and the application of judgment and common sense. In many ways the same type of approach has to be applied as that described in a very different context by Lord Pearce in *B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia*, [1966] A.C. 224 at 264-5 where he said:

> The solution to the problem is not to be found by any rigid test or description. It has to be derived from many aspects of the whole set of circumstances some of which may point in one direction, some in the other. One consideration may point so clearly that it dominates other and vaguer indications in the contrary direction. It is a commonsense appreciation of all the guiding features which must provide the ultimate answer. Although the categories of capital and income expenditure are distinct and easily ascertainable in obvious cases that lie far from the boundary, the line of distinction is often hard to draw in border line cases; and conflicting considerations may produce a situation where the answer turns on questions of emphasis and degree.

[12] This passage was cited with approval by the Supreme Court of Canada in *M.N.R. v. Algoma Central Railway*, [1968] S.C.R. 447. Although it dealt with the question of capital versus income expenditures, it is apposite in this type of case as well. No single test is determinative and no mechanical recitation of the *Wiebe Door* factors necessarily leads to the right conclusion. One is tempted to quote what Estey J. said in *Johns-Manville Canada Inc. v. The Queen*, 85 DTC 5373 at 5377:

> When one turns to the appropriate principles of law to apply to the determination of the classification of an expenditure as being either expense or capital, an unnerving starting place is the comment of the Master of the Rolls, Sir Wilfred Greene in *British Salmson Arrow Engines Ltd. v. Commissioner of Inland Revenue* (1938), 22 T.C. 29, at p. 43:
>
> . . . there have been ... many cases where this matter of capital or income has been debated. There have been many cases which fall upon the borderline: indeed, in many cases it is almost true to say that the spin of a coin would decide the matter almost as satisfactorily as an attempt to find reasons . . .

[13] I mentioned earlier that these cases are close. This is illustrated by the frequency with which the Federal Court of Appeal reverses decisions of this court on the basis that the wrong factors were applied or that greater emphasis should have been given to one factor over another. Let us examine some of the cases that have been decided over the last few years and how the various factors have been treated in the determination of this type of question. (See Appendix A)

(a) control
(b) ownership of tools
(c) chance of profit
(d) risk of loss (sometimes (c) and (d) are combined)
(e) integration

Tests (a), (b), (c) and (d) are, according to *Wiebe Door*, all part of one single test. Integration is not part of the four-in-one test and it is considered rather difficult to apply. It has never been a basis for deciding that a person is an employee except in cases in this court that have been reversed on appeal.

(f) intent

1. *Wiebe Door*: The Tax Court of Canada was reversed because the trial judge put too much emphasis on the integration (or organization) test. The door installers were held by the Federal Court of Appeal to be independent contractors. The Federal Court of Appeal reiterated the test in *Montreal v. Montreal Locomotive Works Ltd. et al.*, [1947] 1 D.L.R. 161 at 169-170.

> In earlier cases a single test, such as the presence or absence of control, was often relied on to determine whether the case was one of master and servant, mostly in order to decide issues of tortious liability on the part of the master or superior. In the more complex conditions of modern industry, more complicated tests have often to be applied. It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving (1) control; (2) ownership of the tools; (3) chance of profit; (4) risk of loss. Control in itself is not always conclusive.

[14] What is apparent from *Wiebe Door* is that the integration or organization test is of no assistance and is substantially discredited and any trial judge who relies upon it does so at his or her peril.

[15] One analysis that has remained unscathed is that of Cooke J. which is referred to in *Wiebe Door* as follows:

> Perhaps the best synthesis found in the authorities is that of Cooke J. in Market Investigations, Ltd. v. Minister of Social Security, [1968] 3 All E.R. 732, 738-9: [FOOTNOTE 3 : This test has been widely cited. For example, it was referred to by all three Court of Appeal judges in Ferguson v. John Dawson & Partners (Contractors) Ltd., [1976] 3 All E. R. 817, and the two majority judges, supra, at pp. 824, 831, each described it as 'very helpful.']
>
> The observations of Lord Wright, of Denning L.J., and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: 'Is the person who has engaged himself to perform these services performing them as a person in business on his own account?' If the answer to that question is 'yes,' then the contract is a contract for services. If the answer is 'no' then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will

> no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk be taken, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. The application of the general test may be easier in a case where the person who engages himself to perform the services does so in the course of an already established business of his own; but this factor is not decisive, and a person who engages himself to perform services for another may well be an independent contractor even though he has not entered into the contract in the course of an existing business carried on by him.

2. *Sagaz*: This case puts the imprimatur of the Supreme Court of Canada on *Wiebe Door*.

3. *Precision Gutters Ltd. v. M.N.R.*, 2002 FCA 207, [2002] F.C.J. No. 771 (QL). The Tax Court of Canada was reversed and the installers of eavestroughs were held to be independent contractors and not employees as held by the Tax Court judge.

[16] This case follows the *Wiebe Door* analysis. It placed a somewhat different emphasis on the components of the four-in-one test. In paragraphs 14 and 15 the Federal Court of Appeal said:

> [14] What the Tax Court Judge characterized as the fourth ingredient of the four-in-one test, namely "integration of the alleged employees' work into the alleged employer's business" is not part of that test but rather has been characterized as a wholly separate test (the integration test). It originated with Denning L.J. in *Stevenson Jordan and Harrison Ltd. v. MacDonald and Evans* [1952] 1 T.L.R. 101. He articulated it in the following way:
>
> > One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it.
>
> [15] Thus the Tax Court Judge has confused the four-in-one test with the integration test. The four criteria of the four-in-one test are (1) the degree or absence of control exercised by the employer; (2) ownership of the tools; (3) chance of profit; (4) risk of loss (see *Mirichandani v. Canada (Minister of National Revenue*) [2001] F.C.J. 269 and *Wiebe Door Services, supra* at p. 5028).

And in paragraphs 18, 19 and 20:

> [18] Thus Major J. has indicated that the central question to be decided in cases such as these is whether the person who has been engaged to perform the services is performing them as a person in business on his own account or is performing them in the capacity of an employee. In order to make this determination the four criteria set out in *Wiebe Door* are factors to be considered.
>
> [19] While neither Major J. in *Sagaz* nor MacGuigan J.A. in *Wiebe Door* completely rejected the "integration test", they did find that it could be difficult to apply.
>
> [20] The Tax Court Judge quoted from the *Market Investigations* case and then posed this question to himself, "whose business is it?" referring to the instant case. The Tax Court Judge pursued this question under the heading "Integration" in his reasons, apparently of the view that the question posed in *Market Investigations* was part of the integration test. It is clear from Justice Major's reasons that he did not consider what he referred to as the "central question" as being related to the integration test.

One significant thing that *Precision Gutters* did was to put one more nail in the coffin of the integration test.

4. *Wolf v. The Queen*, 2002 DTC 6053. In this appeal under the *Income Tax Act*, one of the issues was whether the appellant was earning employment income or business income in Canada. Again, the Tax Court of Canada's conclusion that he was earning employment income was reversed and it was held that he was an independent contractor.

[17] It should be emphasized that the relationship in question was governed by article 2085 of the *Quebec Civil Code*. That article reads:

Art. 2085. A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.	Art. 2085. Le contrat de travail est celui par lequel une personne, le salarié, s'oblige, pour un temps limité et moyennant rémunération, à effectuer un travail sous la direction ou le contrôle d'une autre personne, l'employeur.

[18] Articles 2098, 2099 and 2100 deal with independent contractors. They read as follows:

CHAPTER VIII	CHAPITRE HUITIEME

CONTRACT OF ENTERPRISE OR FOR SERVICES	DU CONTRAT D’ENTREPRISE OU DE SERVICE
SECTION I	SECTION I
NATURE AND SCOPE OF THE CONTRACT	DE LA NATURE ET DE L’ÉTENDUE DU CONTRAT
Art. 2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.	Art. 2098. Le contrat d’entreprise ou de service est celui par lequel une personne, selon le cas l’entrepreneur ou le prestataire de services, s’engage envers une autre personne, le client, à réaliser un ouvrage matériel ou intellectuel ou à fournir un service moyennant un prix que le client s’oblige à lui payer.
Art. 2099. The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance.	Art. 2099. L’entrepreneur ou le prestataire de services a le libre choix des moyens d’exécution du contrat et il n’existe entre lui et le client aucun lien de subordination quant à son exécution.
Art. 2100. The contractor and the provider of services are bound to act in the best interests of their client, with prudence and diligence. Depending on the nature of the work to be carried out or the service to be provided, they are also bound to act in accordance with usual practice and the rules of art, and, where applicable, to ensure that the work done or service provided is in conformity with the contract.	Art. 2100. L’entrepreneur et le prestataire de services sont tenus d’agir au mieux des intérêts de leur client, avec prudence et diligence. Ils sont aussi tenus, suivant la nature de l’ouvrage à réaliser ou du service à fournir, d’agir conformément aux usages et règles de leur art, et de s’assurer, le cas échéant, que l’ouvrage réalisé ou le service fourni est conforme au contrat.
Where they are bound to produce results, they may not be relieved from liability except by providing superior force.	Lorsqu’ils sont tenus du résultat, ils ne peuvent se dégager de leur responsabilité qu’en prouvant la force majeure.

[19] The three Federal Court of Appeal judges appear to have approached the question from three different perspectives.

[20] Desjardins J.A. quoted the *Quebec Civil Code* and then analyzed the question using the common law tests formulated in *Montreal Locomotive* and *Sagaz.* She did so on the following basis at page 6861:

> [48] In *Hôpital Notre-Dame de l'Espérance et Théoret v. Laurent,* [1978] 1 S.C.R. 605, a case in tort, the Supreme Court of Canada was called upon to determine whether a medical doctor was an employee of the hospital where the claiming party had been treated. Pigeon, J., for the Court, cited with approval André Nadeau, "Traité pratique de la responsabilité civile délictuelle", (Montreal: Wilson & Lafleur, 1971) p. 387, who had observed that "the essential criterion in employer-employee relations is the right to give orders and instructions to the employee regarding the manner in which to carry out his work" (pp. 613-14). Pigeon, J. then cited the famous case of *Curley v. Latreille*, [1929] S.C.R. 166, where it was noted that the rule was identical on this point to the common law (*ibid*, at pp. 613-14).
>
> [49] Consequently, the distinction between a contract of employment and a contract for services under the *Civil Code of Québec* can be examined in light of the tests developed through the years both in the civil and in the common law.

[21] Madam Justice Desjardins, in applying the tests, concluded that control was neutral and ownership of tools was neutral. She stated:

> [94] Non-standard employment such as the one of the appellant, which emphasizes higher profit coupled with higher risk, mobility and independence, indicate, in my view, that the appellant correctly claimed the status of contractor or the provider of services under articles 2098 of the Civil Code of Québec. This in turn leads to the conclusion that the appellant provided independent personal services under article XIV of the Convention.

She did not mention intent.

[22] Décary J.A. approached the matter differently. He said at page 6870:

> [117] The test, therefore, is whether, looking at the total relationship of the parties, there is control on the one hand and subordination on the other. I say, with great respect, that the courts, in their propensity to create artificial legal categories, have sometimes overlooked the very factor which is the essence of a contractual relationship, i.e the intention of the parties. Article 1425 of the *Civil Code of Quebec* establishes the principle that "[t]he common intention of the parties rather than the adherence to the literal meaning of the words shall be sought in interpreting a contract". Article 1426 C.C.Q. goes on to say that "[i]n interpreting a contract, the nature of the contract, the circumstances in which it

was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, are all taken into account".

[118] We are dealing here with a type of worker who chooses to offer his services as an independent contractor rather than as an employee and with a type of enterprise that chooses to hire independent contractors rather than employees. The worker deliberately sacrifices security for freedom ("the pay was much better, the job security was not there, there were no benefits involved as an employee receives, such as medical benefits, pension, things of that nature..." Mr. Wolf's testimony, Appeal Book, vol. 2, p. 24). The hiring company deliberately uses independent contractors for a given work at a given time ("it involves better pay with less job security because consultants are used to fill in gaps when local employment or the workload is unusually high, or the company does not want to hire additional employees and then lay them off. They'll hire consultants because they can just terminate the contract at any time, and there's no liabilities involved", *ibid.*, p. 26). The hiring company does not, in its day-to-day operations, treat its consultants the same way it treats its employees (see para. 68 of Madam Justice Desjardins's reasons). The whole working relationship begins and continues on the basis that there is no control and no subordination.

[119] Taxpayers may arrange their affairs in such a lawful way as they wish. No one has suggested that Mr. Wolf or Canadair or Kirk-Mayer are not what they say they are or have arranged their affairs in such a way as to deceive the taxing authorities or anybody else. When a contract is genuinely entered into as a contract for services and is performed as such, the common intention of the parties is clear and that should be the end of the search. Should that not be enough, suffice it to add, in the case at bar, that the circumstances in which the contract was formed, the interpretation already given to it by the parties and usage in the aeronautic industry all lead to the conclusion that Mr. Wolf is in no position of subordination and that Canadair is in no position of control. The "central question" was defined by Major J. in *Sagaz* as being "whether the person who has been engaged to perform the services is performing them as a person in business on his own account". Clearly, in my view, Mr. Wolf is performing his professional services as a person in business on his own account.

[120] In our day and age, when a worker decides to keep his freedom to come in and out of a contract almost at will, when the hiring person wants to have no liability towards a worker other than the price of work and when the terms of the contract and its performance reflect those intentions, the contract should generally be characterised as a contract for services. If specific factors have to be identified, I would name lack of job security, disregard for employee-type benefits, freedom of choice and mobility concerns.

[23] Noël J.A. gave somewhat different reasons:

[122] I too would allow the appeal. In my view, this is a case where the characterization which the parties have placed on their relationship ought to be

> given great weight. I acknowledge that the manner in which parties choose to describe their relationship is not usually determinative particularly where the applicable legal tests point in the other direction. But in a close case such as the present one, where the relevant factors point in both directions with equal force, the parties' contractual intent, and in particular their mutual understanding of the relationship cannot be disregarded.
>
> [123] My assessment of the applicable legal tests to the facts of this case is essentially the same as that of my colleagues. I view their assessment of the control test, the integration test and the ownership of tool tests as not being conclusive either way. With respect to financial risk, I respectfully agree with my colleagues that the appellant in consideration for a higher pay gave up many of the benefits which usually accrue to an employee including job security. However, I also agree with the Tax Court Judge that the appellant was paid for hours worked regardless of the results achieved and that in that sense he bore no more risk than an ordinary employee. My assessment of the total relationship of the parties yields no clear result which is why I believe regard must be had to how the parties viewed their relationship.
>
> [124] This is not a case where the parties labelled their relationship in a certain way with a view of achieving a tax benefit. No sham or window dressing of any sort is suggested. It follows that the manner in which the parties viewed their agreement must prevail unless they can be shown to have been mistaken as to the true nature of their relationship. In this respect, the evidence when assessed in the light of the relevant legal tests is at best neutral. As the parties considered that they were engaged in an independent contractor relationship and as they acted in a manner that was consistent with this relationship, I do not believe that it was open to the Tax Court Judge to disregard their understanding (Compare *Montreal v. Montreal Locomotive Works Ltd.*, [1947] 1 D.L.R. 161 at 170).
>
> [125] I would allow the appeal with costs.

[24] I doubt that it is possible to find one *ratio decidendi* that would apply to all three judgments. The three judges agreed that the Tax Court of Canada judgment could not stand but beyond that I can discern no common thread. Desjardins J.A. did not refer to intent whereas Décary J.A. held common intention to be determinative and, if other factors were necessary, lack of job security, disregard of employee benefits, freedom of choice and mobility were to be considered. While these factors do not appear to have been mentioned previously they are certainly factors whose absence or presence I would consider as significant in the determination of an employer/employee relationship. Noël J.A. treated intention as a balancing factor if the traditional *Wiebe Door* test yielded no conclusive result.

5. *Royal Winnipeg Ballet.* Here the Federal Court of Appeal reversed the Tax Court of Canada and held that the ballet dancers were independent contractors. It would be easy to say, simplistically, that the *ratio decidendi* in the majority (Sharlow and Desjardins JJA) judgment is that despite the trial judge's finding that the preponderance of *Wiebe Door* factors pointed toward an employer/employee relationship between the dancers and the ballet company, the common intention of the parties should be determinative. It is not, however, as simple as that. At page 6332, Sharlow J.A. said:

> [62] It is common for a dispute to arise as to whether the contractual intention professed by one party is shared by the other. Particularly in appeals under the *Canada Pension Plan* and the *Employment Insurance Act*, the parties may present conflicting evidence as to what they intended their legal relationship to be. Such a dispute typically arises when an individual is engaged to provide services and signs a form of agreement presented by an employer, in which she is stated to be an independent contractor. The employer may have included that clause in the agreement in order to avoid creating an employment relationship. The individual may later assert that she was an employee. She may testify that she felt coerced into signifying her consent to the written form of the contract because of financial need or other circumstances. Or, she may testify that she believed, despite signing a contract containing such language, that she would be treated like others who were clearly employees. Although the court in such a case may conclude, based on the *Wiebe Door* factors, that the individual is an employee, that does not mean that the intention of the parties is irrelevant. Indeed, their common intention as to most of the terms of their contract is probably not in dispute. It means only that a stipulation in a contract as to the legal nature of the relationship created by the contract cannot be determinative.
>
> [63] What is unusual in this case is that there is no written agreement that purports to characterize the legal relationship between the dancers and the RWB, but at the same time there is no dispute between the parties as to what they believe that relationship to be. The evidence is that the RWB, the CAEA and the dancers all believed that the dancers were self-employed, and that they acted accordingly. The dispute as to the legal relationship between the dancers and the RWB arises because a third party (the Minister), who has a legitimate interest in a correct determination of that legal relationship, wishes to assert that the evidence of the parties as to their common understanding should be disregarded because it is not consistent with the objective facts.
>
> [64] In these circumstances, it seems to me wrong in principle to set aside, as worthy of no weight, the uncontradicted evidence of the parties as to their common understanding of their legal relationship, even if that evidence cannot be conclusive. The judge should have considered the *Wiebe Door* factors in the light of this uncontradicted evidence and asked himself whether, on balance, the facts were consistent with the conclusion that the dancers were self-employed, as the

parties understood to be the case, or were more consistent with the conclusion that the dancers were employees. Failing to take that approach led the judge to an incorrect conclusion.

[25] Evans J.A. dissented. He said at pp. 6336-7:

[98] When a dispute arises over the proper legal character of a contract, there are good reasons to attach little if any weight to the parties' understanding of it, or to their objective in entering into the contract. First, it is difficult to understand on what basis the parties' view of their contract's legal characterization is relevant, or how it should be weighed with the objective *Wiebe Door/Sagaz* factors. It is one thing to draw an inference about the legal nature of a contract based on, for example, the factors of control, and risk of loss and opportunity for profit. It is quite another to draw an inference from the parties' view of the legal nature of their contract, which is the ultimate question that the court must decide. It is not a legal characteristic of a contract for the supply of services that the parties intended to enter that kind of contract.

[99] Secondly, the parties' view of the legal nature of their contract is inevitably self-serving. Parties generally care primarily about their ultimate objective and only secondarily, if at all, about the legal means of achieving it. Suppose, for example, that their objective was to be exempt from EI premiums. The legal means of achieving this is by entering into a contract for the supply of services. Whether they succeed depends on whether the terms of their contract and their conduct are more consistent with the indicia of a contract for the supply of services than of employment. To the extent that they have thought about it, parties will want to enter into the kind of contract that in law will enable them to attain their ultimate objective.

[100] Similarly, the law attaches little or no weight to the fact that the parties' conduct is consistent with the legal *consequences* of having entered into a contract for the supply of services. These consequences may include the payor's exemption from having to deduct and pay EI premiums and CPP contributions, and the service provider's obligation to register for and to charge GST. These are the legal consequences of a contract for the supply of services, not proof of its existence. The fact that the parties may intend these consequences does not assist in determining whether they have adopted the legal means of achieving them, namely, entering into a contract which has the characteristics of a contract for the supply of services, rather than of employment.

[101] Third, parties to contracts for the performance of work (to use a neutral term) are often not in equal bargaining positions. To attribute appreciable weight to a statement in the contractual document signed by the parties that the contract is one for the supply of services may disadvantage the more vulnerable party, who

> may subsequently say, for example, that she intended the relationship to be one of employment so that she would be covered by EI.
>
> [102] In the face of a clear provision in a signed contract that it is a contract for the supply of services, not a contract of employment, it may be difficult for such a party to deny that, on an objective analysis, this provision embodied the parties' common intention, at least in the absence of misrepresentation or duress. In other words, the vulnerable party is not only bound by the terms of the contract, but her contractual status and, consequently, her statutory rights, may also be prejudiced by the stronger party's legal characterization of the contract.
>
> [103] Fourth, the legal characterization of a contract may have an impact on third parties, such as the victim of a tort committed by a service provider in the course of performing the contract or, as in this case, Revenue Canada. Not to base legal characterization squarely on the terms of the contract, interpreted contextually, may jeopardise those interests, and undermine non-voluntary protective statutory programs, such as EI and CPP.
>
> [104] I am concerned also about the impact on other dancers with the RWB of a finding about the contractual status of the dancers in this case. If the understanding of the dancers is significant to the decision, could the result be different in the case of another dancer with the RWB who denied entering into his contract on the understanding that it was a contract for the supply of services? It seems odd that essentially the same contract could be characterized differently on this basis.
>
> [105] In my opinion, the only significant role of the parties' stated intention or understanding about the legal nature of their contract is as part of the interpretative context in which the court views the contract in order to resolve ambiguities and fill in silences in its terms.

[26] *City Water International Inc.* In that case the Tax Court of Canada judgment that the workers were employees was reversed by the Federal Court of Appeal and the workers were held to be independent contractors.

[27] Malone J.A., after reviewing the traditional *Wiebe Door* criteria, concluded that ownership of tools and control pointed toward the workers being independent contractors whereas the opportunity for profit and degree of financial risk pointed toward their being employees.

[28] Since the factors considered did not point clearly in either direction, Malone J.A. said at paragraphs 27 to 31:

> [27] In balancing the above factors, the result of the inquiry is not obvious. Therefore, it is necessary to determine what weight should be given to the

intention of City Water and the Service Workers at the time of their initial engagement.

[28] If it can be established that the terms of the contract, considered in the appropriate factual context, reflect the legal relationship that the parties intended, then their stated intention cannot be disregarded (see *Royal Winnipeg Ballet v. Canada (Minister of National Revenue*, 2006 FCA 87 at paragraph 61). *Royal Winnipeg* was not decided at the time the Judge rendered his decision.

[29] *Royal Winnipeg* is essentially a re-codification of the law as stated by this Court in *Wolf, supra* at paragraph 15. In that case, the issue before this Court was whether Mr. Wolf was an employee or an independent contractor. Concurring with Desjardins J.A. in the end result, but on the basis of a different analysis, Noël J.A. stated at paragraphs 122 to 124:

> … But in a close case such as the present one, where the relevant factors point in both directions with equal force, the parties' contractual intent, and in particular their mutual understanding of the relationship cannot be disregarded.
> …
>
> My assessment of the total relationship of the parties yields no clear result which is why I believe regard must be had to how the parties viewed their relationship.
>
> …
> It follows that the manner in which the parties viewed their agreement must prevail unless they can be shown to have been mistaken as to the true nature of their relationship. In this respect, the evidence when assessed in the light of the relevant legal tests is at best neutral. As the parties considered that they were engaged in an independent contractor relationship and as they acted in a manner that was consistent with this relationship, I do not believe that it was open to the Tax Court Judge to disregard their understanding.

[30] Thus, the parties' intention will only be given weight if the contract properly reflects the legal relationship between the parties (see *Royal Winnipeg* at paragraph 81). In this case, there is no written agreement that purports to characterize the legal relationship between the Service Workers and City Water; however, there is no dispute between the parties as to what they believe that relationship to be. The evidence is that both parties believed that the workers were self-employed and each acted accordingly.

[31] In my analysis, since the relevant factors yield no clear result, greater emphasis should have been placed on the parties' intention by the Judge in this case. The Judge was required to consider the factors in light of the uncontradicted evidence, and to ask himself whether, on balance, the facts were consistent with the conclusion that the workers were persons in 'business on their own account' (see *Sagaz supra* at paragraph 3), or were more consistent with the conclusion that

> the workers were employees. In failing to do this, he made a palpable and overriding error on a question of mixed law and fact. Had he conducted that analysis, in my view, he could only have concluded that City Water was not the employer of the Service Workers.

[29] This case represents a modification of the position in *Royal Winnipeg Ballet*. It is essentially an adoption of the position stated by Noël J.A. in *Wolf* that only if the *Wiebe Door* tests do not point conclusively in one direction or another should intent be used to tip the scales.

6. *Combined Insurance Company of America v. Canada*, 2007 FCA 60. Once again the decision of the Tax Court of Canada that the insurance salesperson was an employee was reversed and replaced by the decision of the Federal Court of Appeal that she was an independent contractor. The relationship was governed by the *Quebec Civil Code*. In *Combined Insurance*, the contract between the salesperson and the insurance company specifically provided that the salesperson was an independent contractor.

[30] Nadon J.A. speaking for the court in reviewing the case law stated:

> [34] To conclude this review of the applicable case law, I refer to the comments made by Mr. Justice Létourneau in *Le Livreur Plus Inc. v. Canada*, *supra*. After having determined that the question on which the Court had to rule was always that of the true nature of the relationship between the parties, Mr. Justice Létourneau stated at paragraph 18 of his reasons, regarding the relevance of the test in *Wiebe Door*, *supra*:
>
> > [18] In these circumstances, the tests mentioned in *Wiebe Door Services Ltd. v. M.N.R.*, 87 D.T.C. 5025, namely the degree of control, ownership of the work tools, the chance of profit and risk of loss, and finally integration, are only points of reference: *Charbonneau v. Canada (Minister of National Revenue - M.N.R.)* (1996), 207 N.R. 299, paragraph 3. Where a real contract exists, the Court must determine whether there is between the parties a relationship of subordination which is characteristic of a contract of employment, or whether there is instead a degree of independence which indicates a contract of enterprise: *ibid.*
> >
> > [Emphasis added.]
>
> [35] In my view, the following principles emerge from these decisions:
>
> 1. The relevant facts, including the parties' intent regarding the nature of their contractual relationship, must be looked at in the light of the factors in *Wiebe Door*, *supra*, and in the light of any factor which may prove to be relevant in the particular circumstances of the case;

> 2. There is no predetermined way of applying the relevant factors and their importance will depend on the circumstances and the particular facts of the case.
>
> Although as a general rule the control test is of special importance, the tests developed in *Wiebe Door* and *Sagaz, supra*, will nevertheless be useful in determining the real nature of the contract.
>
> . . . . .
>
> . . . Further, it is beyond question that the judge did not in any way consider the tests developed by this Court in *Wiebe Door, supra*, which are, as Mr. Justice Létourneau stated in *Le Livreur Plus, supra*, at the very least useful guidelines in determining whether a contract is one of employment or for services.

[31] In *Combined Insurance* the factors in the *Wiebe Door* test were relegated to the status of "useful guidelines" which, nonetheless, helped to determine the real nature of the contract.

[32] *André Gagnon v. M.N.R.*, 2007 FCA 33, [2007] F.C.J. No. 156 (QL). In this case the Federal Court of Appeal did not reverse the Tax Court of Canada. It in fact upheld the decision that drywallers were employees. In paragraph 5 of the judgment, Justice Létourneau said:

> [5] The contracts between the parties were oral contracts. At the hearing, no evidence was provided as to the intention of the appellant and the individuals regarding their business relationship. However, the four criteria analyzed by the judge are relevant and helpful in ascertaining the intent of the parties to the contract and the legal nature of their relationship.

From this I take it that the Federal Court of Appeal is saying that the principal enquiry must be to determine the intent of the parties and if intent is not explicitly stated the *Wiebe Door* tests must be used as tools in the ascertainment of that intent.

[33] With respect to the factor of intent I would make a couple more observations. The first is that the Supreme Court of Canada has not expressed a view on the role of intent. In *Sagaz*, it was not mentioned as a factor. The second is that if the intent of the parties is a factor it must be an intent that is shared by both parties. If there is no meeting of the minds and the parties are not *ad idem*, intent can not be a factor. The third, if intent is a factor in determining whether someone is an employee or an independent contractor, then it must necessarily be a factor in

all cases where the question is relevant. In this court our focus is usually on the rather narrow question whether a person is employed in insurable or pensionable employment or, under the *Income Tax Act*, whether a person is an employee for the purposes of deducting certain types of expenses or being taxed in a particular way. The *Sagaz* case, on the other hand dealt with vicarious liability. If the test is the same then the rights of third parties could potentially be affected by the subjective intent of the contracting parties as to the nature of their relationship — a concern expressed by Evans J.A. in his dissent in *Royal Winnipeg Ballet.*

[34] Where then does this series of cases leave us? A few general conclusions can be drawn:

(a) The four-in-one test in *Wiebe Door* as confirmed by *Sagaz* is a significant factor in all cases including cases arising in Quebec.

(b) The four-in-one test in *Wiebe Door* has, in the Federal Court of Appeal, been reduced to representing "useful guidelines" "relevant and helpful in ascertaining the intent of the parties". This is true both in Quebec and the common law provinces.

(c) Integration as a test is for all practical purposes dead. Judges who try to apply it do so at their peril.

(d) Intent is a test that cannot be ignored but its weight is as yet undetermined. It varies from case to case from being predominant to being a tie-breaker. It has not been considered by the Supreme Court of Canada. If it is considered by the Supreme Court of Canada the dissenting judgment of Evans J.A. in *Royal Winnipeg Ballet* will have to be taken into account.

(e) Trial judges who ignore intent stand a very good chance of being overruled in the Federal Court of Appeal. (But see *Gagnon* where intent was not considered at trial but was ascertained by the Federal Court of Appeal by reference to the *Wiebe Door* tests that were applied by the trial judge. Compare this to *Royal Winnipeg Ballet*, *City Water* and *Wolf.*

[35] I turn then to the question of the status of the people hired to do the duct cleaning. Despite the temptation to use Sir Wilfred Greene's method I shall endeavour to apply as best I can the principles to be deduced from the Federal Court of Appeal's decisions.

[36] I have considered this case on the basis of four alternative hypotheses. They all lead to the same conclusion.

(a) Intent is determinative (*Royal Winnipeg Ballet*).

(b) *Wiebe Door* is all that is needed and intent need not be considered (*Sagaz, Wiebe Door* and *Precision Gutters*).

(c) The *Wiebe Door* test does not point conclusively in any direction and so intent is a tie-breaker (*Wolf* and *City Water*).

(d) Common sense, instinct and a consultation with the man on the Clapham omnibus.

[37] If the law did not permit me to look at anything but the *Wiebe Door* test, standing by itself, then I would have to say that it pointed more to independent contractor than employee. There was no supervision and no control. The workers were picked and told to go to a particular house. If mistakes had to be corrected the workers had to go back at their own expense and correct their mistakes. They had a chance of profit and bore the risk of loss. They got paid a percentage of the fee paid to Dun-Rite. If Dun-Rite did not get paid neither did they. If Dun-Rite got plenty of orders their chances of increased income were commensurately enhanced. If Dun-Rite chose not to hire a worker he simply was not hired. If they did a good job their chances of getting hired for the next job were enhanced. Ownership of tools points in neither direction. The appellants supplied the vacuum equipment and the van and the workers supplied the small tools.

[38] If intent is determinative clearly the workers were independent contractors. (*Royal Winnipeg Ballet)* Both the appellants and the workers who were called as witnesses regarded themselves as independent contractors. This is evident from their oral testimony and from the fact that no employee benefits, no vacation pay, and no job security were provided. The workers had to wait around until they were contacted by the appellants or Monty Hagan. They could accept or decline the job and they could take other jobs. They had no assurance that they would be hired by Dun-Rite and they had no guarantee of being hired again after the particular jobs for which they were hired were completed. These factors bring them within the considerations enunciated by Décary J.A. in *Wolf.*

[39] If we regard intent as merely a tie-breaker (as stated in Noël J.A.'s judgment in *Wolf* as well as in Malone J.A.'s decision in *City Water*), the same result would apply even if the *Wiebe Door* tests pointed unequivocally in neither

direction. While the law does require me to look at the *Wiebe Door* test it does not prevent me from looking beyond it in order to determine the true relationship between the parties. If the *Wiebe Door* test yielded an inconclusive result, a consideration of the parties' intent clearly tips the scales toward an independent contractor relationship.

[40] If I were to rely solely on my own instincts and common sense I would say that quite apart from the *Wiebe Door* test, quite apart from intention, workers who are called on to clean the ducts of a couple of houses, paid a portion of the fee and then sent on their way do not by any stretch of the imagination look like employees.

[41] Therefore, despite Ms. Sittler's very able, thorough and fair argument, the appeals are allowed and the assessments referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with these reasons and the determinations are varied in accordance with these reasons.

Signed at Ottawa, Canada this 14th day of September 2007.

"D.G.H. Bowman"

Bowman, C.J.

Post - *Wolf* Federal Court of Appeal Jurisprudence on the Employee/Independent Contractor Distinction

(because the same test applies across the board, the following cases are not restricted to EI and CPP)

Case	Citation	TCC	FCA	J.A.	Pr.	Comments
Delaware Nation v. Logan	[2007] F.C.J. No. 604	EE*(CLC)	dismissed	Sexton	ON	no reviewable error
Gagnon v. Canada	[2007] F.C.J. No. 156	EE	dismissed	Létourneau	ON	no evidence led of workers' intention
Combined Insurance Co. of America v. Canada	[2007] F.C.J. No. 124	EE	allowed	Nadon	QC	intention in light of Wiebe --> nature of contract
City Water International v. Canada	[2006] F.C.J. No. 1655	EE	allowed	Malone	ON	intention as tie-breaker
3234339 Canada Inc. (c.o.b. Credico Marketing Inc.) v. Canada	[2006] F.C.J. No. 1406	EE	dismissed	Létourneau	QC	workers' intentions unknown --> credibility and weight
Royal Winnipeg Ballet v. Canada	[2006] F.C.J. No. 339	EE	allowed	Sharlow	ON	intentions given greater weight - control OK
Dedekind v. Canada	[2006] F.C.J. No. 2103	IC	dismissed	Létourneau	QC	parties' intentions overborne by other factors
9041-6868 Québec Inc. v. Canada	[2006] F.C.J. No. 1720	EE	dismissed	Décary	QC	result correct even though civil law test not used
Dynamic Industries Ltd. v. Canada	[2006] F.C.J. No. 997	EE	allowed	Sharlow	BC	PSB case - Wiebe Door not intention
Carabax v. Canada	[2006] F.C.J. No. 80	EE	allowed	Rothstein	ON	redetermination -- missing evidence
Marathon Electric Ltd. v. Canada	[2004] F.C.J. No. 1791	EE	dismissed	Evans	BC	no reviewable error
Ambulance St-Jean v. Canada	[2004] F.C.J. No. 1690	EE	allowed	Létourneau	ON	parties' intentions entitled to more weight
Dawdnay Transport Group Ltd. v. Canada	[2004] F.C.J. No. 827	EE	dismissed	Linden	BC	no reviewable error
Tremblay v. Canada	[2004] F.C.J. No. 802	EE	allowed	Létourneau	QC	Revenue Canada Bulletin --> parties intentions
Livreur Plus Inc. v. Canada	[2004] F.C.J. No. 257	EE	allowed	Létourneau	QC	paras. 16-19 give summary of legal rules
Productions Patit Bonhomme Inc. v. Canada	[2004] F.C.J. No. 238	IC	dismissed	Décary	QC	no reviewable error
D&J Driveway Inc. v. Canada	[2003] F.C.J. No. 1764	EE	allowed	Létourneau	QC	disagreement on subordination -no issue of intention
Lazbeski v. Canada	[2003] F.C.J. No. 1757	IC	dismissed	Malone	MB	no reviewable error
BCH Inc. v. Canada	[2003] F.C.J. No. 1421	EE	dismissed	Evans	ON	no reviewable error
Smith (c.o.b. Rainbow Taping & General Contracting) v. Canada	[2003] F.C.J. No. 981	EE	dismissed	Sexton	ON	no reviewable error
Dynamex Canada Inc. v. Mamona	[2003] F.C.J. No. 907	EE*(CLC)	dismissed	Sharlow	MB	no intention -- contracting parties disagreed
Shaw Communications Inc. v. Canada	[2003] F.C.J. No. 641	EE	dismissed	Rothstein	AB	no reviewable error
Poulin v. Canada	[2003] F.C.J. No. 141	EE	allowed	Létourneau	QC	need to give more weight to parties' intentions
Legacé v. Canada	[2003] F.C.J. No. 119	IC	allowed	Desjardins	QC	Wiebe door factors - not intention
Comeau's Sea Foods v. Canada	[2002] F.C.J. No. 1808	IC	dismissed	Sexton	NS	no reviewable error
Nemetco Holdings Ltd. v. Canada	[2002] F.C.J. No. 1680	EE	dismissed	Strayer	BC	ER didn't sign purported employment contract
Jaillet v. Canada	[2002] F.C.J. No. 1454	IC	dismissed	Létourneau	NB	no reviewable error
Yellow Cab Co. v. Canada	[2002] F.C.J. No. 1062	EE	allowed	Sexton	BC	EI s.6(e) exception - with dissent
Meredith v. Canada	[2002] F.C.J. No. 1007	IC	allowed	Malone	AB	wrong to pierce corp veil - bona fide legal relationship
Acier Inoxydable Fafard Inc. v. Canada	[2002] F.C.J. No. 794	IC	allowed	Létourneau	QC	Co. was separate legal entity
Precision Gutters Ltd. v. Canada	[2002] F.C.J. No. 771	EE	allowed	Sexton	BC	intention not a factor in this case
Groupe Desmarais Pinsonneault & Avard Inc. v. Canada	[2002] F.C.J. No. 572	IC	allowed	Noël	QC	Co. (separate legal entity) could have controlled workers
Mastech Quantum Inc. v. Canada	[2002] F.C.J. No. 552	IC	allowed	Richard C.J.	ON	contract was with subsidiary and not parent
Kraatz (c.o.b. Keepsafe Systems) v. Canada	[2002] F.C.J. No. 351	EE	dismissed	Strayer	BC	oral agreement to be IC was outweighed
Wolf v. Canada	[2002] F.C.J. No. 375	EE	allowed	Desjardins	QC	intention: tie-break or essence of contractual relationship

EE - employee

IC - independent contractor

*(CLC) - not T.C.C., made by a referee under the *Canada Labour Code*

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